IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 2714 of 2003
Date of decision: 10.12.2007

Tej Kaur **...Appellant**

Versus

Amar Kaur and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Gurcharan Dass, Advocate for the appellant.

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amandeep Singh, Advocate for respondent No.1.

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RAJESH BINDAL, J.

The plaintiff is in second appeal before this Court against concurrent findings of fact by both the Courts below whereby suit filed by her for declaration to the effect that she was owner in possession of plot measuring 5 marlas as per Jambandi for the year 1984-85 was dismissed.

It was pleaded that plot in question was allotted to the husband of appellant/plaintiff and she being his widow was the owner thereof. The case set up by the respondents/defendants was that infact the plot in question was exchanged by husband of appellant/plaintiff with another plot measuring 3 marlas way back in 1964 and the possession of the plots was duly exchanged between the parties. Ever since then both the parties are in respective possession of the plots.

Learned counsel for the appellant submitted that in terms of provisions of 13-A of Punjab village Common Lands (Regulation) Rules 1964, the plot allotted to the landless workers could not possibly be sold, exchanged or mortgaged except for the purpose of raising loan to construct a house. He further submitted that oral exchange was nothing in the eyes of law as the same was not got registered. On the other hand, learned counsel for respondent No. 1 submitted that the exchange took place way back in 1964 and infact plot measuring 3 marlas was transferred in the name of husband of the appellant/plaintiff by respondent no.1 from Khasra No. 1265, mutation to that effect was duly entered in the revenue record. He still submitted that the exchange having taken place 28 years before filing of

the suit during the life time of Bhajna, husband of the appellant/plaintiff, she should not be permitted to back out. The provisions of Transfer of Property Act are not applicable in the State of Punjab. It is only broad principles thereof which are applicable. The date of death of Bhajna was purposely not brought on record as the same would have further weakened the case of the appellant/plaintiff. The Rules sought to be relied upon by the appellant/plaintiff will not be applicable in the facts and circumstances of the case as in the present case, the exchange was made in 1964 whereas Rule sought to be relied upon by the appellant/plaintiff was inserted in 1976. He further submitted that an earlier suit filed by the appellant/plaintiff for permanent injunction regarding same property was dismissed in default and even the present suit filed by her was not maintainable in terms of order 9 Rule 8 of the Code of Civil Procedure (for short "the Code") and also Order 2 Rule 2 of the Code.

Having heard learned counsel for the parties, I do not find any merit in the present appeal. The findings recorded by both the Courts below are plain and simple findings of fact. The oral exchange entered into between the parties way back in 1964 is duly entered in the revenue record, which could not be controverted by the appellant/plaintiff. Once Bhajna had taken another plot in exchange of the plot allotted in his favour by the Government and factum thereof is duly found entered in the revenue record with the mutation entered in his name, in my opinion, no stale claim could be raised by the appellant at this stage. Still further though plaint in the earlier suit filed by the appellant/plaintiff was not exhibited as the same was only marked but still the factum cannot be denied that she had earlier filed suit for permanent injunction regarding the same property, which was dismissed in default and no steps were taken to get the same restored. When she had already filed a suit regarding the same property whatever relief the appellant wanted, the same could very well be claimed in the suit.

Accordingly, I do not find any substantial question of law arises in the present appeal and the same is dismissed.

December 10, 2007 **(Rajesh Bindal)**
Pka **Judge**